

REMARKS

Claims 1, 2, 4-7, 9, 31, 32 and 34 are currently pending. Claims 1, 4, 6, 9, 31 and 34 have been amended. No new matter has been added as a result of this amendment. Claims 2, 3, 7, 8, 32 and 33 have been canceled. Following claim cancellation, claims 1, 4-6, 9, 31 and 34 are pending for examination.

**Legal Principles**

Under the patent statute, a patent claim is invalid if the claimed invention is anticipated by a prior art reference under 35 U.S.C. § 102. The Federal Circuit has held that anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference. *See, e.g., In re Spada*, 911 F.2d 705, 15 U.S.P.Q.2d 1655 (Fed. Cir. 1990); *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989); *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 7 U.S.P.Q.2d 1315 (Fed. Cir. 1988); *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1 U.S.P.Q.2d 1081 (Fed. Cir. 1986). For anticipation, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1665, 18 U.S.P.Q.2d 1001 (Fed. Cir. 1991) (emphasis added).

The Examiner has rejected the above pending claims as anticipated under 35 USC § 102 by US 4,127,706 (hereinafter “Martin ‘706”), US 4,043,331 (hereinafter “Martin ‘331”), US 2004/0037813 (hereinafter “Simpson ‘813”), US 2003/0215624 (hereinafter “Layman ‘624”), US 6,800,155 (hereinafter “Senecal ‘155”) and US 2003/0017208 (hereinafter “Ignatious ‘208”). The Examiner states in the Office Action that “[a]s to the molecular sieve, the prior art teaches the incorporation of the same type of mesoporous material contemplated by applicants. Accordingly it is the examiner’s position that each of the cited prior art references teaches a mesoporous sieve as well.” *See* Office Action mailed December 1, 2005 at p. 4, ¶ 1.

The examiner’s position is an incorrect one. The term “mesoporous molecular sieve” is a term of art that possesses a very specific meaning. *See* Declaration of Kenneth J. Balkus, Jr. (hereinafter “Balkus Decl.”) attached hereto. One of ordinary skill in the art would recognize the term “mesoporous molecular sieve” to refer to an ordered periodic metal oxide-based

structure. Balkus Decl. at ¶5. The examiner has failed to show that any of the cited references teach a fiber comprising a mesoporous molecular sieve. Certain of the cited references disclose the use of certain metal oxides. However, none of the cited references recite the incorporation of these metal oxides in a molecular sieve, or the incorporation of such a molecular sieve in a fiber produced by electrospinning. Additionally, as set forth in the Balkus Decl., mesoporous molecular sieves were first discovered only in 1992 by Mobil. *Id.* Hence, the examiner's citation of Martin '706 (1978) and Martin '331 (1977) is inapposite. In sum, the cited references do not teach each and every element of the claimed invention, and thus do not anticipate the claimed invention.

Additionally, Applicants have distinguished known electrospun polymer fibers found in the prior art from the claimed invention. *See* Specification at page 2, lines 20-22.

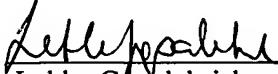
### **Conclusion**

In view of the above amendments and arguments, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to reconsider the rejections and pass this application to issue.

Applicants have authorized payment of the RCE filing fee for small entity in the amount of \$395, in the accompanying RCE transmittal letter. If any additional fees are due, the Commissioner is authorized to charge the additional fees in connection with this paper to our Deposit Account No. 50-0310 (064422-5007US).

Respectfully submitted,

**MORGAN, LEWIS & BOCKIUS LLP**

By:   
Lekha Gopalakrishnan  
Reg. No. 46,733

Dated: March 1, 2006

MORGAN, LEWIS & BOCKIUS LLP  
1717 Main Street, Suite 3200  
Dallas, Texas 75201-7347  
Tel: 214.466.4116  
Fax: 214.466.4001